(2)

97-935

No.

Supreme Court, U.S.
FILED
JAN 8 1998
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TECHNICAL SERGEANT DONALD J. DRESEN,

PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

Supplement to Petition For a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

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Pro Se

December 1997

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On this 3rd day of December 1997, Respondent Donald J. Dresen petitions The United States Supreme Court to overturn the conviction in this case. Respondent requests that the Honorable Discharge Order given by The Secretary of the Air Force in March 1991 be carried out. Respondent also requests that this Honorable Court ensure that there be no further violation of his constitutional rights. This appeal is based on the following facts:

1. The convening authority, 8th Air Force, instigated, condoned, and approved of the violation of several of the respondent's constitutional rights. A blatant act of bias.

2. This is a LANDMARK ISSUE because of the fact that no American has ever lost their right to vote for the misdemeanor offense of use of marijuana.

3. Respondent has received ineffective and incompetent advice from every assigned military counsel. There is an inherent "conflict of interest" when the convening authority assigns counsel for the respondent.

4. There was no "JUST CAUSE" to ever start an investigation on the respondent. It was instigated because respondent "blew the whistle" on fraud, waste, and mismanagement at Carswell Air Force Base.

Because the Supreme Court has never granted an Air Force respondent's petition for a writ of certiorari, that is proof in itself that the UCMJ has invalidated The Constitution and our Bill of Rights, stripping all military members of their inalienable rights in the process. Therefore, respondent requests a hearing by The World Court if The Honorable Supreme Court refuses to consider it.

If the Honorable Court decides to review this appeal, I respectfully request at least a 90 day notice before the hearing. This will give me ample time to make the necessary

arrangements that will allow me to be present, to present all of the evidence.

1. The convening authority, 8th Air Force, instigated, condoned, and approved of the violation of several of the respondent's constitutional rights. A blatant act of bias.

Article 31—Miranda Rights

"You may request a lawyer at any time during questioning. If you decide to answer questions, you may stop the questioning at any time."

Approximately five minutes after the questioning began, I requested an attorney. Agent Brannon stopped the questioning and called the ADC to set up an appointment for me for an hour and a half later. He then continued to question me for another hour until I finally submitted a written statement. Agent Brannon told me that they had received a tip, from an informant, that he had seen me with a known drug dealer on a specific day and time. I wrote a statement denying that the tip was true. I told Agent Brannon that I was at the base golf course at that time and that he could easily verify that fact by contacting the people that I was with. He didn't verify my information because if he had the investigation would have stopped there. There was no "PROBABLE" or "JUST CAUSE" to continue, which leads us to our 4th Amendment.

4th Amendment

"The right of the people to be secure in their persons and effects against unreasonable searches and seizures, shall not be violated."

Because a convicted felon made a false statement about me, in order to cooperate with authorities, and gain a lighter sentence himself, the violation of my rights was initiated.

5th Amendment

"Nor shall he be compelled in any criminal case to be a witness against himself."

I was ordered to submit to urinalysis testing and to consult with Social Actions and Mental Health. I was threatened with court-martial action for disobedience if I did not comply. After cooperating, the information was used to prosecute me.

6th Amendment

The Accused shall enjoy the right to a speedy trial, by an impartial jury." "To be confronted with the witnesses against: to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense."

After the initial Command Directed U/A was returned with positive results in July 1989, 39–10 Administrative Discharge action was taken and approved by The Sec. of the Air Force. The legal office took no action on that order. Instead they violated my rights giving me unlawful orders and rigged "random" urinalysis tests, four in less than three months. Charges were not brought until August 1990 and court-martial proceedings began on 15 Jan 91.

Not only was I subjected to a trial by a partial jury, the judge and the ADC counsel were partial as well. It was not a jury of my peers, all members were superior in rank and had a higher level of education than myself. The judge exhibited his partiality by not allowing the witnesses and a majority of the evidence I submitted for presentation to the jury. He also denied my request for time to prepare my defense after it became necessary for me to relieve my assigned counsel of his duties. He refused to present my defense in the manner I had specified and he was more detrimental than effective in my cause.

Prior to the Article 32 hearing I was not given the opportunity to question the informant, nor did I have ample time to prepare or gather witnesses in my favor. After the Article 32 my assigned counsel failed to submit the objections that I had to it.

The "ineffective counsel" began on the day in June that I was called in to be questioned by Agent Brannon. He set up an appointment for me with Capt. Zarlengo. The problem is, Capt. Zarlengo was already representing the person that had informed on me. Thus his client benefited when Capt. Zarlengo advised me. Because of this fact Capt. Farris was assigned to represent me in Sept. 89, three months after I had requested an attorney. Capt. Farris advised me not to do anything that could incriminate myself. By following his advice I was subjected to the charges of disobedience. After relieving Capt. Farris because of his nonchalant attitude, Capt. Williamson was assigned to assist me. He advised me to submit a statement to The Secretary of the Air Force, thru the Carswell Legal Office. That statement was used to prosecute me. When charges were brought against me he was unable to secure any type of a pre-trial agreement. He failed to recognize and advise the Court that the convening authority advised that two of the most serious charges against me were not to be referred to trial. He failed to prepare my defense in the manner that we had discussed. He took an Administrative Discharge and built it into a GCM for the prosecution. Instead of securing an Honorable Discharge, as promised, I will become a convicted felon if this Honorable Court does not grant relief. Capt. Norwood was assigned to assist me with clemency matters. The Court of Military review found that she was ineffective. Capt McIntyre was assigned to assist me with my appeal to the Court of Military Appeals. He failed to submit the statement that I submitted to him concerning bias on the part of the 8th Air Force. And finally

we arrive at this writ of certiorari. I spoke by telephone with Lt. Col. Sheffield on 13 Oct 97 about submitting this petition and explained that I wanted to meet, in person, with the attorney that would be assigned to assist me. It is now only eleven days before the deadline and I have not yet been assigned counsel.

8th Amendment

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

By agreeing to the 39–10 Discharge I was accepting my punishment and forfeiting any and all pension that I would have earned, which could amount to more than a quarter of a million dollars. Isn't that an excessive fine in itself for this minor offense? Obviously not, 8th Air Force and The Carswell Legal Staff was not satisfied. They brought five false and malicious charges to make it a General Court Martial and felony offense. However, the five false charges have been thrown out or over-turned. That leaves only the initial charge of "use", which was obtained by a *Command Directed Urinalysis Test.*

For an offense that is generally handled with an Article 15 or an Administrative Discharge, I lost all of my pension and benefits. In addition I endured the embarrassment of being demoted and of having to spend ten months in confinement. What is the loss of Freedom worth? The Court of Review found that it was excessive, but nothing has been done to remedy. No meaningful relief has been granted. If the "loss of freedom", degrading treatment, loss of income and livelihood is not excessive as well as cruel and unusual punishment for this offense, then I suggest that the loss of my right to vote and participate in our political process surely is.

After serving our country favorably and honorably for nineteen years I wasn't even granted rehabilitation and retention.

14th Amendment

"The right of the people to petition the Government for redress of grievances."

The convening authority, 8th Air Force in this case, is supposedly the best place for an appellant to gain clemency and meaningful relief. The action taken by 8th A.F. ensured that I spend my entire sentence behind bars instead of being eligible for parole in six months. In addition they affirmed a felony conviction for a very minor offense. These are blatant acts of bias.

The Courts of Review and Appeal agreed that the sentence was excessive yet neither of them granted meaningful relief.

Now I plead to the Supreme Court of the land to protect my constitutional rights and for meaningful redress. Did I become less of a citizen when I joined the Air Force? I don't remember forfeiting any of my rights when I signed on the dotted line.

2. This is a LANDMARK ISSUE, because of the fact that, no American has ever lost their right to vote, for the misdemeanor offense of use of marijuana.

If the false and malicious charges of disobedience had never been referred to trial, as directed by the convening authority, there would not have been any grounds for a General Court Martial. The Secretary of the Air Force had approved an Honorable Discharge because this action began with a Command Directed U/A. This conviction and sentence is excessive, cruel, and unusual. A violation of the 8th amendment.

3. Respondent has received ineffective counsel from every assigned military counsel. There is an inherent "conflict of interest" when the convening authority assigns counsel for the appellant.

Agent Brannon, from OSI, sent me to speak with Capt. Zarlengo when I was initially questioned in June 1989. They both knew that he was already defending the person who had informed on me. This is a "conflict of interest" and he should have refused to counsel me. When I requested an attorney I should have access to one before any further questioning not an hour and a half later. An impartial attorney wasn't assigned until the end of Sept. 89, three months late.

Capt. Williamson was assigned to handle the Administrative Discharge. I followed his advice and waived a board hearing. He told me to write a letter to the Sec. of the Air Force requesting rehabilitation and retention. The request was denied, but the Honorable Discharge was approved. The Carswell Legal Staff ignored that order and used my letter against me to build a General Court Martial case.

Charges were brought against me at 9:00AM and the Article 32 was held that same afternoon at 13:00. Capt. Williamson arrived at 10:00AM and consulted with me for about one hour. It was not possible for him to prepare in that short of a time. He should have requested a delay, instead he went ahead, his first motion was that the IO Capt. Kenny, recuse herself because of bias. She refused and he failed to object to it afterwards. In fact I had several objections to the way the Article 32 was handled. I typed them up and sent them to Capt. Williamson but he didn't bother to file any objections at all. I found it very unusual that the people that had "informed" on me were not called as witnesses. Their stories were false.

In Dec. 90 Capt. Williamson and I met with a civilian attorney and we all greed that Capt. Williamson should try to

work out a pre-trial agreement. I agreed to plead guilty to the charge of use, if the remaining false charges were dropped. I told him that if he could not make an agreement that he should be prepared to defend me on the basis of addiction. He said that he would and that he would consult with some doctors on the subject. He was unable to reach a pre-trial agreement and he failed to consult with any doctors or prepare the defense in the manner that I had directed. Instead, one day before the trial, he sent an aide to counsel me. I was told that I should plead guilty to everything and to "throw myself to the mercy of the court. I told him that I would let Capt. Williamson know what I was prepared to do when he arrived in the morning. (the day of the trial)

At that time Capt. Williamson should have been aware that the convening authority directed that two of the charges were not to be referred to trial. I knew nothing about it until I was in jail a month or so later. Why was he advising me to plead guilty to these charges? It was very obvious why I decided to relieve Capt. Williamson, Judge Morrison should not have allowed the trial to begin knowing that the convening authority had directed that the two charges be dropped. Instead he denied my request for time to prepare my defense.

Capt. Norwood was assigned to assist me with clemency matters to the convening authority. She totally ignored what I told her to ask for. And she refused to assist me in preparing a request for rehabilitation and retention according to Air Force regulations. The Court of Review found her to be ineffective but failed to grant meaningful relief.

Capt. McIntyre was assigned to assist me with my appeal to the Military Court of Appeals. He failed to prove bias on the part of 8th Air Force. Before the hearing I sent him a letter that pointed out several instances of bias, he failed to submit it to the Court.

At the beginning of Oct. 1997 I was notified that he Court of Appeals had denied the appeal. I received written instructions from Lt. Col. Sheffield to call her if I intended to submit a writ to the Supreme Court. I did, on 13 Oct. 97 and spoke with her in person. She told me that an attorney would be assigned to assist me. It is now twelve days before the deadline to submit and I have not been contacted by anyone.

4. There was no "Just Cause" to ever start an investigation on the respondent. It was initiated because respondent "blew the Whistle" on fraud, waste, and mismanagement at Carswell Air Force Base.

During a five year period between 1985 and 1990 I submitted numerous suggestions that would have saved thousands of dollars, if they had been adopted. After being ignored on several issues I began filing complaints with the Inspector General. My allegations were confirmed but no action was taken. I received a letter of apology from the commander that the majority of the allegations referred to.

Carswell Air Force Base received one of its poorest ratings ever in July 89. The Wing Commander, the Base Commander, and the IG all were relieved of their duties. None of them did anything to held me in regards to be retained or rehabilitated. They allowed the prosecution to violate my constitutional rights.

Some of the same allegations that I made ten years ago still haven't been addressed, and the waste and mismanagement is costing taxpayers needlessly everyday.

Instead of acknowledging my outstanding efforts and my previous 19 years of Honorable service, they elected to "shoot the messenger."

Respectfully submitted,

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